SENATE BILL No. 555

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-38.

Synopsis: HERO plan. Establishes the Hoosier Employee Retirement Option plan (plan) to encourage Indiana residents to increase their rate of saving and to build assets for the use of participants and their survivors and beneficiaries after a participant's retirement. Establishes a plan board (board) with nine members: the treasurer of state, the auditor of state, the director of the office of management and budget, the commissioner of the department of labor, and five members appointed by the governor. Provides that the appointed board members serve four year terms and that the treasurer is the board chair. Requires the board to provide oversight for the plan, which is administered, operated, and managed by one or more investment managers, private financial institutions, or other financial and services providers selected by the board through a competitive bidding process. Requires the board to annually prepare and adopt a written statement of investment policy. Requires the board to submit an annual report to the governor and the general assembly concerning the operating and financial performance of the plan. Provides that the plan be audited annually by the state board of accounts, and may be audited by a certified public accountant, if the board determines it advisable. Establishes a plan administrative fund to pay any administrative expenses incurred in developing, implementing, and operating the plan. Requires that the plan be maintained as individual retirement accounts with contributions made by payroll deduction and be offered to employees who elect to enroll by employers that voluntarily choose to participate and do not offer any other kind of retirement plan. Provides that the state, the board, and participating employers are not fiduciaries for the plan and that the plan

(Continued next page)

Effective: July 1, 2015.

Walker

January 20, 2015, read first time and referred to Committee on Pensions & Labor.

is not a debt, liability, or obligation of the state. Requires the board, before the plan takes effect, to oversee the design and dissemination to all employers eligible to participate in the plan information about the plan. Provides that the board maintain an Internet web site to assist employers in identifying private sector providers of available pension and retirement plans, if providers express interest in and provide the funding for the Internet web site.

Introduced

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 555

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-38 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

ARTICLE 38. HOOSIER EMPLOYEE RETIREMENT OPTION PLAN

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Board" refers to the Hoosier employee retirement option plan board established by IC 4-38-2-1.

Sec. 3. "Compensation" means wages, salary, commissions, and any other form of remuneration within the meaning of Section 219(f)(1) of the Internal Revenue Code (29 U.S.C. 219(f)(1)) paid for personal services by a participating employer to a participant.

Sec. 4. "Employee" has the meaning set forth in IC 22-2-2-3.

Sec. 5. "Employer" means an individual, a corporation, a partnership, a limited liability company, and any other legal entity that:

(1) has at least one (1) employee; and

(2) is legally doing business in Indiana.

Sec. 6. "Fund" refers to the Hoosier Employee Retirement Option Plan administrative fund established by IC 4-38-2-11.

Sec. 7. "Internal Revenue Code" has the meaning set forth in IC 6-3-1-11.

Sec. 8. "Participant" means an employee or self-employed individual who has elected to participate in the plan.

Sec. 9. "Participating employer" means a person or entity that:

(1) meets the eligibility requirements established under IC 4-38-3-2 to participate in the plan as an employer; and

(2) elects to participate in the plan.

Sec. 10. "Plan" refers to the Hoosier employee retirement option plan established by IC 4-38-3-1.

Sec. 11. "Self-employed individual" has the meaning set forth in 26 U.S.C. 401(c)(1)(B).

Chapter 2. Hoosier Employee Retirement Option Plan Board and Administrative Fund

Sec. 1. The Hoosier employee retirement option plan board is established.

Sec. 2. (a) The board consists of nine (9) members as follows:

(1) The following four (4) ex-officio members:

(A) The treasurer of state.

(B) The auditor of state.

(C) The director of the office of management and budget.

(D) The commissioner of the Indiana department of labor.

(2) The following five (5) members appointed by the governor:

(A) Two (2) members with knowledge, skill, and expertise in retirement savings plan administration, investments, or both.

(B) One (1) member who is an attorney admitted to practice in Indiana with knowledge, skill, and expertise in federal labor and tax law.

(C) One (1) member who is a participating employer (or before the plan is in operation, an employer who would meet the eligibility requirements established under IC 4-38-3-2 to participate in the plan as an employer, if the plan were in operation).

(D) One (1) member who is a participant (or before the plan is in operation, an employee who would meet the requirements established under IC 4-38-3-3 to participate in the plan, if the plan were in operation).

(b) During an appointed member's term of service on the board, the member may not be an official or employee of the state.

(c) An appointed member of the board serves a four (4) year term. An appointed member shall hold over after the expiration of the member's term until the member's successor is appointed and qualified.

(d) A vacancy of an appointed member of the board shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(e) The treasurer of state shall serve as the chair of the board.

(f) An ex officio member of the board may designate a person to serve as an ex officio member of the board.

Sec. 3. (a) The initial terms of office for the five (5) individuals appointed to the board by the governor are as follows:

(1) The member appointed under section 2(a)(2)(D) of this chapter for a term of one (1) year.

(2) One (1) member appointed under section 2(a)(2)(A) of this chapter for a term of two (2) years.

(3) The member appointed under section 2(a)(2)(B) of this chapter for a term of two (2) years.

(4) The member appointed under section 2(a)(2)(C) of this chapter for a term of three (3) years.

(5) One (1) member appointed under section 2(a)(2)(A) of this chapter for a term of four (4) years.

(b) The initial terms begin July 1, 2015.

(c) This section expires July 1, 2019.

Sec. 4. (a) An appointed member of the board is not entitled to the minimum salary per diem provided under IC 4-10-11-2. Each appointed member is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

(b) An ex officio member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

Sec. 5. (a) Each board member shall take an oath of office to:

(1) diligently and honestly administer the affairs of the board; and

(2) not knowingly violate or willingly permit the violation of

any law applicable to the plan.

(b) The oath must be:

(1) subscribed to by the board member making the oath;

(2) certified by the officer before whom the board member takes the oath; and

(3) filed with the secretary of state.

(c) The board member is qualified for membership on the board when the board member's oath is filed with the secretary of state.

Sec. 6. (a) Five (5) members of the board constitute a quorum.

(b) The affirmative vote of a majority of the members on the board is necessary for the board to take action.

(c) The board:

(1) shall hold its first meeting not later than August 31, 2015;

(2) shall meet:

(A) quarterly during the state fiscal year beginning July 1, 2015; and

(B) semiannually during state fiscal years beginning after June 30, 2016; and

(3) may meet more frequently at the call of the chair.

Sec. 7. The board shall do all the following:

(1) Evaluate and establish the design, establishment, and operation of the plan in a manner that:

(A) is in accord with the best practices for retirement savings vehicles;

(B) maximizes participation, savings, and sound investment practices;

(C) maximizes simplicity, including ease of administration for participating employers and participants;

(D) ensures the portability of benefits; and

(E) provides for the distribution of participant assets in a manner that maximizes financial security for the participant and the participant's survivors and beneficiaries in retirement.

(2) Explore and establish investment options for the plan that offer participants:

(A) investment returns on participant contributions; and

(B) the conversion of participant account balances to secure retirement income;

without the state incurring debt or liability.

(3) Employ or contract with public or private persons or entities, including investment managers, private financial institutions, other financial and services providers,

consultants, actuaries, legal counsel, auditors, third party administrators, staff, and other professionals, for the provision of all or any part of the services the board considers necessary for the management and operation of the plan, including the administration of the plan.

(4) Conduct a review of the performance of the plan's administrators and investment managers at least every four (4) years. The review must include a review of plan returns, fees, and customer service. A copy of a review conducted under this subdivision must be posted on the board's Internet web site.

(5) Evaluate and establish a process for:

(A) a participant to contribute a portion of the participant's compensation to the plan:

(i) using payroll deductions, if the participant is an employee; or

(ii) using checking or savings account transfers, if the participant is self employed; and

(B) participating employers to send a participant's payroll deductions and related information to the plan.

The board may contract with financial service companies or third party administrators to assist the plan with the receipt and processing of participant contributions and related information from participating employers and self-employed individuals.

(6) Evaluate and establish a process for the enrollment of participating employers in the plan.

(7) Evaluate and establish a process for an employee or self employed individual to:

(A) elect to enroll in the plan;

(B) select a contribution rate;

(C) select one (1) or more investment options; and

(D) terminate participation in the plan.

(8) Accept appropriations, grants, gifts, and other sources of money from the federal, state, or local government or from any other person, firm, partnership, corporation, or other legal entity solely for deposit into the fund.

(9) Indemnify board members for personal losses, costs, and expenses associated with defending against any claim or suit relating to an act or a failure to act authorized under this article.

(10) Provide for the payment of administrative costs and

expenses associated with the creation, operation, and management of the plan.

(11) In accordance with IC 4-38-3-1(e), request from the Internal Revenue Service any rulings or determination letters that the board considers necessary or appropriate in order to implement the plan.

(12) Facilitate compliance by the plan with all applicable requirements for the plan under the Internal Revenue Code and any other applicable law or accounting requirements.

(13) Facilitate education and outreach efforts concerning the plan to employers, employees, and self employed individuals who may be eligible to participate in the plan.

(14) Establish and maintain an Internet web site to:

(A) provide informational materials and reports concerning the plan for participating employers, participants, and the public; and

(B) in accordance with IC 4-38-3-6, assist employers in identifying private sector providers of pension and retirement arrangements other than the plan.

(15) Prepare the investment, risk management, and oversight policies required under section 8 of this chapter.

(16) Prepare an annual report for the plan required under section 10 of this chapter.

(17) Have the plan audited annually by the state board of accounts, and if the board determines that it is advisable, have the plan audited by a certified public accountant. The board shall submit each year by July 1 the report prepared under this subdivision to the governor, the treasurer of state, the auditor of state, and general assembly. The report submitted to the general assembly must be in an electronic format under IC 5-14-6.

(18) Carry out the board's duties and obligations under the plan in an effective, efficient, and low cost manner.

(19) Adopt rules under IC 4-22-2 as necessary to implement this article.

(20) Exercise all powers, necessary, convenient, or appropriate to:

(A) carry out and effectuate the purposes and objectives of this article; and

(B) conduct the board's business.

Sec. 8. (a) The board annually shall prepare and adopt a written statement of investment policy that includes risk management and

oversight components.

(b) The investment policy adopted under subsection (a) must prohibit the board, plan, and fund from borrowing for investment purposes.

(c) The risk management and oversight components must be designed to ensure that an effective risk management system is in place to:

(1) monitor the risk levels of the plan and the fund portfolio;

(2) ensure that the risks taken are prudent and properly managed;

(3) provide an integrated process for overall risk management; and

(4) assess investment returns as well as risk to determine whether the risks taken are adequately compensated compared to applicable performance benchmarks and standards.

(d) The board shall consider the statement of investment policy and any changes to the policy at a public hearing.

Sec. 9. (a) The board shall select and enter into a written contract with one (1) or more investment managers, financial and services providers, or third party administrators to administer the plan and invest the participants' contributions.

(b) The board shall select these persons through a competitive bidding process established using specifications described in IC 4-38-3-4 and any other specifications considered appropriate by the board.

(c) In selecting one (1) or more administrators and managers, the board shall take into consideration and give weight to the administrators' and managers' fees and charges in order to reduce the plan's administrative expenses.

Sec. 10. (a) The board shall annually prepare and submit a report to the governor and the general assembly summarizing the operating and financial performance of the plan, including:

(1) the number of participating employers and participants;

(2) the rates of return, fees charged participants, and amounts invested in each of the plan's investment options;

(3) the costs and expenses incurred by the board; and

(4) any other information necessary to make a full, fair, and effective disclosure of the operating and financial condition of the plan.

(b) The report submitted under subsection (a) to the general assembly must be in an electronic format under IC 5-14-6.

Sec. 11. (a) The Hoosier employee retirement option plan administrative fund is established to provide money for paying any administrative expenses incurred in developing, implementing, and operating the plan, including the plan's start-up costs.

(b) The board shall administer the fund.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The fund consists of:

(1) money appropriated to the fund by the general assembly;

(2) money received from federal, state or local government grants; and

(3) donations, gifts, and money received from any other source.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 12. (a) Subject to appropriation, the board may pay the administrative costs associated with the development, implementation, and management of the plan from the fund until sufficient resources are available from the plan to pay the plan's administrative costs. Thereafter, the plan must pay the plan's administrative costs.

(b) Donations, gifts, grants, or money from sources other than state appropriations used to develop and implement the plan will not be repaid unless the amounts were offered contingent upon a promise of repayment.

(c) The board shall keep the annual administrative expenses as low as possible.

Chapter 3. Plan Establishment; General Provisions.

Sec. 1. (a) The Hoosier employee retirement option plan is established to encourage and promote greater retirement savings by Indiana residents working in the private sector and to assist those residents in building assets in a convenient, low cost, and portable manner for the use of participants and their survivors and beneficiaries after the participant's retirement.

(b) The plan shall be maintained as individual retirement accounts under Section 408 of the Internal Revenue Code (26 U.S.C. 408) with contributions made by participants on a post-tax basis.

(c) The board shall provide oversight of the plan, which shall be administered by one (1) or more administrators selected by the board.

(d) The board may not be a fiduciary or considered a fiduciary for the plan.

(e) The board may implement the plan only after the board receives from the Internal Revenue Service any rulings or determination letters that the board considers necessary or appropriate. If the board determines that it is advisable to make a request to the Internal Revenue Service under this subsection, the board shall make the request not later than six (6) months after the date of the board's first meeting.

(f) Notwithstanding any other provision in this article, if the board does not obtain adequate funding to implement the plan within the time set forth in this article, the board may delay the implementation of the plan.

Sec. 2. (a) In order to become a participating employer, an employer must not offer its employees a pension or retirement plan of any kind.

(b) The action of an employer to become a participating employer is voluntary.

(c) A participating employer shall begin making payroll deductions for employees who have elected to become participants in the plan not later than nine (9) months after the date the plan is first implemented.

Sec. 3. An individual who is:
(1) employed by a participating employer; or
(2) a self employed individual;
may elect to be a participant in the plan.

Sec. 4. (a) In conducting the competitive bidding process required by IC 4-38-2-9, the board shall use specifications considered appropriate by the board and include at least the provisions listed in subsection (b).

(b) The specifications must include at least the following:
(1) That the plan be implemented and enrollment begin not later than twenty-four (24) months after the board establishes the plan's effective date.
(2) That the investment choices offered by the plan include at least a life cycle fund with a target date based upon the age of the enrollee and seven (7) additional diversified investment funds.
(3) That the investment choices offered by the plan include

low fee options.
(4) That a participant is able to make contributions to the plan using:
(A) payroll deductions, if the participant is an employee of a participating employer; or
(B) checking or savings account transfers, if the participant is self employed.
(5) That a participant may select a contribution rate expressed as a percentage of compensation or a dollar amount. If the participant does not select a rate, the participant's contribution rate is three percent (3%) of the participant's compensation. In any event, the participant's contribution may not exceed the deductible amount under section 219(b)(1)(A) of the Internal Revenue Code (26 U.S.C. 219(b)(1)(A)) for the participant's taxable year. Participant contributions are made on a post-tax basis.
(6) That a participating employer may not:
(A) make employer contributions to the plan on behalf of a participant; or
(B) match participant contributions.
(7) That a participant may select an investment option offered under the plan. If the participant does not select an investment option, the participant's contributions shall be placed in the default investment option selected by the plan's administrator. A participant must be allowed to change investment options at any time, subject to rules adopted by the plan.
(8) That the plan be designed so that:
(A) the administrative costs of the plan are paid by or from the plan; and
(B) the persons selected to administer the plan reimburse the board for any of the plan's start-up costs paid by state appropriations.
(9) That a participant's benefit under the plan is the balance in the participant's plan account on the date the account becomes payable. The state and the board have no liability for the payment of any benefit to any participant in the plan.
(10) That a participant may terminate participation in the plan at any time in the manner prescribed by the plan's administrator.
(11) That, after the plan's initial implementation, a participating employer must designate an open enrollment

period in the plan at least once each year. An employee may elect to participate in the plan only when initially hired or during the participating employer's designated open enrollment period, unless the participating employer allows an employee to enroll at a different time.

(12) That participant contributions deducted by a participating employer through payroll deduction must be paid to the plan at one (1) of the following times:

(A) Not later than the last day of the month following the month in which the compensation that was deducted would have otherwise been payable to the participant in cash.

(B) By a deadline that is later than the time specified in clause (A) prescribed by the board for making the payment, but not later than the due date for the deposit of tax required to be:

(i) deducted and withheld relating to the collection of income tax at source on wages; or

(ii) paid under the state's unemployment compensation system (established by IC 22-4) for the payroll period to which the payment relates.

(13) That participating employers retain at all times the option to set up another type of employer sponsored retirement plan instead of participating in the plan.

(14) That persons selected to administer the plan shall comply with:

(A) all applicable federal and state laws, rules, and regulations; and

(B) all rules and policies adopted by the board for the plan, including the investment, risk management, and oversight policies under IC 4-38-2-8.

(15) That persons selected to administer the plan shall cooperate with the board on the following:

(A) In the preparation and dissemination of employer and employee information packets and disclosure forms required by section 5 of this chapter.

(B) In the development and maintenance of the Internet web site required by section 6 of this chapter.

(16) That persons selected to administer the plan shall prepare and submit to the board all reports the board considers necessary to oversee each administrator's performance and the performance of the plan, including periodic reports to participating employers. The reports to

participating employers must be at least annual and include, for the reporting period:

(A) the names of each participant employed by the participating employer;

(B) the contribution amounts made by the participant;

(C) the investment income allocated to, withdrawals from, and balances in each participant's plan account; and

(D) any other information regarding the plan that the board requests.

Sec. 5. (a) Before the plan's effective date, the board shall oversee the design and disseminate to all employers eligible to participate in the plan an employer and employee information packet about the plan. The board shall provide for the contents of the employer and employee information packets.

(b) The information packet provided to employers must include:

(1) background information about the plan;

(2) appropriate disclosures for employees; and

(3) information concerning the Internet web site described in section 6 of this chapter.

(c) The information packet provided to employees must include an enrollment form and a disclosure form.

(d) The disclosure form in the employee information packet must include at least the following:

(1) The benefits and risks associated with participating in the plan.

(2) The process by which an employee enrolls in and makes contributions to the plan.

(3) The process by which a participant selects a contribution rate and that the default contribution rate is three percent (3%) of the participant's compensation.

(4) A description of the plan's investment options and the process by which a participant selects and changes investment options.

(5) How a participant makes withdrawals from the participant's account at retirement.

(6) How a participant terminates participation in the plan and stops contributions.

(7) A statement that:

(A) employees seeking financial advice should contact financial advisors of their choosing;

(B) participating employers are not able to provide financial advice; and

(C) participating employers are not liable for decisions that employees make concerning the plan.

(8) A statement that the plan is not an employer sponsored retirement plan.

(9) A statement that the plan is not insured or guaranteed by the state of Indiana.

(10) Information as to how to obtain additional information about the plan.

(e) The employee enrollment form must include the employee's selected contribution rate and a statement that, if the employee does not choose a contribution rate, the default contribution rate is three percent (3%) of the employee's compensation.

(f) Participating employers shall supply employee information packets to employees during the plan's initial implementation. Thereafter, participating employers shall provide employee information packets to:

(1) new employees at the time of hire; and

(2) during the participating employer's annual open enrollment period.

Sec. 6. (a) Subject to subsection (b), the board shall develop and maintain an Internet web site designed to assist employers in identifying private sector providers of pension and retirement plans that the employer may set up instead of participating in the plan.

(b) The board is not required to develop and maintain an Internet web site under subsection (a) unless private sector providers of pension and retirement plans:

(1) express sufficient interest in having the Internet web site; and

(2) provide the funding required to develop and maintain the Internet web site.

(c) If an Internet web site is developed under this section, the following are required:

(1) The board shall provide public notice of the development of the Internet web site and the process by which providers may be included on the Internet web site before the Internet web site is available to the public.

(2) The board shall make the Internet web site available to the public before the plan is open for initial enrollment.

(3) The Internet web site address must be included on any Internet web site posting or other materials concerning the plan offered to employers and the public.

Chapter 4. Miscellaneous Provisions

Sec. 1. (a) The plan established by this article may not be construed as a debt, a liability, or an obligation of the state.

(b) The state is not responsible for and may not be held liable for the payment of any retirement benefit under the plan.

Sec. 2. (a) A participating employer is not responsible for and may not be held liable for any loss or damage resulting from the operation or performance of the plan established under this article.

(b) A participating employer is not a fiduciary and may not be considered a fiduciary of the plan. A participating employer does not have responsibility for the administration, investment, or investment performance of the plan.

(c) A participating employer may not be held liable for an employee's decision to participate or not participate in the plan.